

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MOBEX NETWORK SERVICES, LLC)	File Nos. 0001082495-0001082548
)	
Renewal Applications for Automated Maritime)	
Telecommunications System Service Along the)	
Mississippi River)	

MEMORANDUM OPINION AND ORDER

Adopted: January 11, 2010

Released: January 14, 2010

By the Commission:

I. INTRODUCTION

1. This item rejects an application for review that raises untimely arguments. Warren C. Havens (Havens), AMTS Consortium, LLC, Intelligent Transportation & Monitoring Wireless, LLC, Telesaurus-VPC, LLC (TVL), and Telesaurus Holding GB, LLC (collectively “Petitioners”) filed an application for review¹ of an *Order on Reconsideration* by the Public Safety and Critical Infrastructure Division (PSCID) of the Wireless Telecommunications Bureau (Bureau).² The *Order on Reconsideration* denied Havens’s petition for reconsideration related to the above-captioned applications to renew the licenses of Mobex Network Services, LLC (Mobex) for Automated Maritime Telecommunications System (AMTS) stations along the Mississippi River.³ For the reasons discussed below, we deny the application for review.⁴

¹ Application for Review (filed Oct. 24, 2005) (AFR).

² Mobex Network Services, LLC, *Order on Reconsideration*, 20 FCC Rcd 14813 (WTB PSCID 2005) (*Order on Reconsideration*).

³ Mobex Network Services, LLC, *Order*, 18 FCC Rcd 12309 (WTB PSPWD 2003) (*Order*) (denying petition to deny).

⁴ Petitioners filed a petition for reconsideration concurrently with the application for review. Petition for Reconsideration (filed Oct. 24, 2005). We will address the application for review. Because the new material relating to Mobex’s character qualifications, and whether its licenses terminated automatically for discontinuance of service, already is the subject of a pending proceeding in which these issues are more directly relevant, *see* Mobex Network Services, LLC, *Order on Reconsideration*, 22 FCC Rcd 665 (WTB MD 2007) (*Mobex*), *review and recon. pending*, we decline to consider the new information in this proceeding. Even assuming Petitioners’ allegations have merit, the Commission’s policy is that a licensee’s misconduct with respect to one station is not necessarily relevant to its qualifications to hold any station license, and “[i]f the Commission has not as an initial matter found that the allegations under consideration involve conduct likely to impact the future operations of other stations, there generally appears to be no reason to condition or defer” processing of applications regarding other stations. *See, e.g.,* Paging Systems, Inc., *Memorandum Opinion and Order*, FCC 09-115, ¶ 8 (rel. Jan. 4, 2010) (citing Policy Regarding Character Qualifications in Broadcast Licensing, *Report, Order and Policy Statement*, GEN Docket No. 81-500, 102 F.C.C. 2d 1179, 1224-25 ¶ 94 (1986)). We retain discretion to impose limitations or take appropriate action with regard to these stations at a later time if circumstances warrant. In any event, the petition for reconsideration also would be subject to dismissal because Petitioners have not demonstrated that they could not have discovered the new facts earlier. *See* 47 C.F.R. § 1.106(c). We also remind petitioners that our rules prohibit the filing of a petition for reconsideration and application for review of the same action on delegated authority. *See*

(continued....)

II. BACKGROUND

2. Two spectrum blocks are designated for AMTS operations.⁵ Waterway Communications System, Inc. (Watercom) was granted authorization for AMTS stations along the Mississippi River on Channel Block A in 1982.⁶ The Commission's practice under the site-based AMTS rules was that it would not assign both blocks at once to one licensee, but would grant a request for a second block upon a showing of need.⁷ In 1984, the Commission granted Watercom's application for Channel Block B along the Mississippi River, based on Watercom's showing of need,⁸ and the absence of opposition.

3. In 1986, the Commission denied a petition by Riverphone, Inc. (Riverphone) to deny Watercom's supplement to the information on file,⁹ stating, "Although raised against a current Watercom filing, the petition challenges the underlying justifications for Watercom's expansion into the Group B series. This matter would have been properly raised two years ago Such a challenge now, by any entity, whether or not it existed in March 1984, is grossly untimely."¹⁰ The Commission subsequently denied a petition by Riverphone to modify Watercom's authorization. Riverphone again argued that it was anticompetitive and contrary to the public interest to authorize Watercom on both channel blocks. The Commission again noted that no party raised any concerns regarding possible anticompetitive effects while Watercom's Channel Block B application was pending.¹¹ Finally, the Commission stated that "[t]o force WATERCOM to redesign and engineer its system at this late date would be grossly inequitable."¹²

4. When the Commission later adopted a geographic licensing approach for AMTS stations, it agreed with all of the commenters, including Mobex and Havens, that an applicant should be able to

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47 C.F.R. § 1.104(b); *see also* Regionet Wireless License, LLC, *Memorandum Opinion and Order*, 17 FCC Rcd 21263, 21265 n.26 (2002); Regionet Wireless License, LLC, *Memorandum Opinion and Order*, 17 FCC Rcd 21269, 21269 n.1 (2002).

⁵ *See* 47 C.F.R. § 80.385(a)(2). AMTS stations provide automated ship-to-shore communications similar to a cellular phone system for tugs, barges, and other maritime vessels. *See* Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-732, 6 FCC Rcd 437, 437 ¶ 3 (1991).

⁶ *See* Waterway Communications System, *Memorandum Opinion and Order*, FCC 82-360 (rel. Aug. 11, 1982). Watercom was the first applicant after the Commission allocated spectrum for AMTS use in 1981. *See* Amendment of Parts 2, 81 and 83 of the Commission's Rules to Allocate Spectrum for an Automated Inland Waterways Communications System (IWCS) along the Mississippi River and Connecting Waterways, GEN Docket No. 80-1, 84 F.C.C. 2d 875, 876 ¶ 2 (1981), *on recon.*, *Memorandum Opinion and Order*, 88 F.C.C. 2d 678 (1982), *aff'd sub nom. WJG Tel. Co. v. FCC*, 675 F.2d 386 (D.C. Cir. 1982).

⁷ *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22607 ¶ 44 (2000).

⁸ Watercom submitted a supporting traffic analysis, propagation test results, and studies of potential intra-system interference. *See* Riverphone, Inc., *Memorandum Opinion and Order*, 2 FCC Rcd 239, 239 ¶ 4 (1987) (*Riverphone*); Waterway Communications System, Inc., *Order*, FCC 86-230, ¶ 3 (rel. May 8, 1986) (*Watercom*).

⁹ In view of the "prototype nature" of Watercom's venture, the Commission authorized it to supplement the information on file by submitting particulars, such as site coordinates, as they became known. *See* Waterway Communications System, Inc., *Memorandum Opinion and Order*, 2 FCC Rcd 241, 241 ¶ 5 (1987); *Riverphone*, 2 FCC Rcd at 239 ¶ 3.

¹⁰ *Watercom*, FCC 86-230 at ¶ 6.

¹¹ *See Riverphone*, 2 FCC Rcd at 239-240 ¶ 10. The Commission also stated that there was no evidence that Watercom applied for the Channel Block B spectrum for the purpose of blocking competition. *Id.* at 240 ¶ 11.

¹² *Id.* at 240 ¶ 11.

acquire both channel blocks in the same geographic area.¹³ The Commission concluded that granting both blocks to one licensee would not have anticompetitive consequences in light of competition from other commercial mobile radio service providers, and it specifically noted that granting both blocks to Watercom had caused no harm.¹⁴ When the AMTS spectrum was auctioned, TVL was the high bidder for the Channel Block B license in the Mississippi River region,¹⁵ and Mobex's successor-in-interest¹⁶ was the high bidder for the Channel Block A license in that region.¹⁷

5. In 2003, the Bureau's Public Safety and Private Wireless Division (PSPWD) denied Havens's petition to deny Mobex's applications to renew the licenses for the site-based incumbent Mississippi River AMTS stations, which Mobex had acquired. Havens argued that the applications should be dismissed, or processed with respect to only one channel block, because Mobex did not need both blocks. PSPWD found that the prior limitation on assigning both blocks applied only to initial site-based applications, not renewal applications,¹⁸ and to the extent Havens was contesting the 1984 Channel Block B grant to Watercom, his challenge was untimely.¹⁹ PSPWD further concluded that renewal of the licenses was not conditioned on Mobex demonstrating that both blocks were being fully utilized.²⁰ Finally, PSPWD noted that Havens offered no reason to revisit the Commission's conclusions in 1987 and 2002 that the grant of both blocks to this system did not harm competition.²¹

6. In 2005, PSCID²² denied Havens's petition for reconsideration. Havens argued that the prior limitation on assigning both blocks should apply indefinitely rather than only to the initial grant, but PSCID concluded that the renewal was not conditioned on a demonstration that both channel blocks were being fully utilized.²³ Havens argued that his challenge to the Commission's 1984 licensing decision to grant both frequency blocks to Watercom was not untimely because Section 312(a)(2) of the Communications Act (the Act) permits license revocation for "conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application."²⁴ PSCID concluded that Havens's assertion that Watercom's anticipated future traffic never materialized (assuming arguendo that Watercom's forecast was incorrect) is not the type of circumstance that merits license revocation.²⁵ Finally, Havens argued that allowing Mobex to retain both blocks was

¹³ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6704 ¶ 41 (2002).

¹⁴ *Id.* No entity sought reconsideration of these conclusions.

¹⁵ See Automated Maritime Telecommunications System Spectrum Auction Closes, *Public Notice*, 19 FCC Rcd 18252, 18258 (WTB 2004).

¹⁶ See *Mobex* 22 FCC Rcd at 673 ¶ 17 (affirming grant of application to assign licenses from Mobex to Maritime Communications/Land Mobile, LLC).

¹⁷ See Auction of Automated Maritime Telecommunications System Licenses Closes: Winning Bidders Announced for Auction No. 61, *Public Notice*, 20 FCC Rcd 13747, 13755 (WTB 2005).

¹⁸ See *Order*, 18 FCC Rcd at 12311 ¶ 7.

¹⁹ *Id.* at 12311 n.24.

²⁰ *Id.* at 12311 ¶ 8.

²¹ *Id.* at 12311 ¶ 9.

²² The Commission reorganized the Bureau effective November 13, 2003, and the relevant duties of the PSPWD were assumed by PSCID. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

²³ See *Order on Reconsideration*, 20 FCC Rcd at 14815 ¶ 6.

²⁴ 47 U.S.C. § 312(a)(2).

²⁵ See *Order on Reconsideration*, 20 FCC Rcd at 14816 ¶ 7.

anticompetitive, and that the Commission's 1987 and 2002 decisions were not to the contrary. PSCID was not persuaded by Havens's interpretations of the Commission decisions, and affirmed the conclusion that the grant of both frequency blocks was not anticompetitive.²⁶

III. DISCUSSION

7. An application for review of the September 22, 2005 *Order on Reconsideration* was due Monday, October 24, 2005.²⁷ Petitioners filed the application for review electronically on October 24, 2005, pursuant to interim procedures permitting the filing of certain pleadings by facsimile or electronic mail.²⁸ On the morning of October 25, 2005, before 9:00 a.m. Eastern time, Petitioners electronically filed an amended version of the application of review, which included additional issues.²⁹ They argue that the amended application for review should be accepted as timely, because the interim filing procedures did not specify that a pleading filed between midnight on the due date and the start of business the next day would be untimely, and no party was prejudiced.³⁰ We disagree. Filings are due on the day that they are due, not at some (unspecified) time the following day. The amended application for review was therefore untimely. Indeed, the Commission addressed this specific issue in another decision involving Havens, which Petitioners neither acknowledge nor attempt to distinguish.³¹ As in that matter, "Havens has not explained why the corrections and clarifications in the amended application for review could not have been incorporated into the initial application for review."³² Consequently, we will address only the initial application for review.³³

8. Petitioners argue that the grant to Watercom over twenty-five years ago of authorization to operate on Channel Block B was erroneous and should be rescinded.³⁴ They contend that Watercom failed to demonstrate a need for the second block, and that Watercom applied for Channel Block B to forestall competition rather than due to any need for additional spectrum.³⁵ We will not address the merits of the grant to Watercom, as such a challenge, over twenty years after the Commission decided this

²⁶ *Id.* at 14816 ¶ 8.

²⁷ *See* 47 C.F.R. § 1.115(d).

²⁸ *See* Implementation of Interim Electronic Filing Proceedings for Certain Commission Filings, *Order*, 16 FCC Rcd 21483 (2001), *rescinded*, *Order*, 22 FCC Rcd 11381 (2007).

²⁹ That afternoon, Petitioners filed an erratum version of the amended application of review, which included maps referenced but not included in the amended version.

³⁰ *See* Suggestion of Timely Filing Under FCC 01-345 at 3-5 (filed Nov. 1, 2005) (Suggestion). Petitioners argue that this would afford filers in western time zones "equal time" to meet deadlines. *See id.* at 5.

³¹ *See Regionet*, 17 FCC Rcd at 21265 ¶ 6 (deeming untimely an amended version filed electronically by Havens after midnight); *see also* 47 C.F.R. § 1.4(f) (documents filed electronically must be received before midnight).

³² *Regionet*, 17 FCC Rcd at 21265 ¶ 6. Consequently, we deny Petitioners' alternative request, *see* Suggestion at 6, that we grant leave to file the amended application for review out of time. *See Regionet*, 17 FCC Rcd at 21265 ¶ 6 ("[E]lectronic filers who wait until the last minute of the last day of the filing period to submit a pleading should not routinely expect a waiver."); 47 C.F.R. § 1.46(a) ("extensions of time shall not be routinely granted").

³³ None of the other procedural defects proffered by Mobex merits dismissing the application for review. *See* Opposition at 4-6. As at least one of the Petitioners clearly has standing, we need not address whether any do not. *See* Emmis Communications Corp., *Order on Reconsideration*, 21 FCC Rcd 12219, 12220 ¶ 3 (2006). Also, we find that the application for review sets forth the issues sufficiently for us to address them.

³⁴ *See* AFR at 7.

³⁵ *Id.* at 6.

issue, is grossly untimely.³⁶

9. Petitioners also reiterate the argument that granting Watercom both channel blocks was anticompetitive, but do not point to any specific error in PSCID's conclusion to the contrary.³⁷ We agree with PSCID that the record before us presents no grounds to revisit the Commission's 1987 and 2002 determinations that the grants did not have an improper anticompetitive effect.

10. Finally, Petitioners argue that their challenge to the 1984 grant should be permitted under Section 312(a)(2) of the Act.³⁸ Petitioners misconstrue the nature of this proceeding, for their attacks on the 1984 grant are premised not on new information or changed circumstances, but on a disagreement with the merits of the original decision. We agree with PSCID that the subject of this proceeding is Mobex's renewal application, which is "not conditioned on Mobex demonstrating that both AMTS channel blocks are being fully utilized."³⁹

IV. CONCLUSION AND ORDERING CLAUSES

11. Petitioners have not demonstrated that the *Order on Reconsideration* contains a material error or did not fully consider the arguments raised therein. We therefore deny the application for review.

12. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 303(r), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, that the application for review filed by Warren C. Havens, AMTS Consortium, LLC, Intelligent Transportation & Monitoring Wireless, LLC, Telesaurus-VPC, LLC, and Telesaurus Holding GB, LLC on October 24, 2005 IS DENIED.

13. IT IS FURTHER ORDERED that the Suggestion of Timely Filing under FCC 01-345 filed by Warren C. Havens, AMTS Consortium, LLC, Intelligent Transportation & Monitoring Wireless, LLC, Telesaurus-VPC, LLC, and Telesaurus Holding GB, LLC on November 1, 2005, IS DENIED, and the amended application for review filed on October 25, 2005 IS DISMISSED.

14. IT IS FURTHER ORDERED that the petition for reconsideration filed by Warren C. Havens, AMTS Consortium, LLC, Intelligent Transportation & Monitoring Wireless, LLC, Telesaurus-VPC, LLC, and Telesaurus Holding GB, LLC on October 24, 2005 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁶ *Watercom*, FCC 86-230 at ¶ 6; see also *Riverphone*, 2 FCC Rcd at 240 ¶ 11 ("[t]o force [the licensee] to redesign and engineer its system at this late date would be grossly inequitable").

³⁷ See AFR at 6.

³⁸ See *id.* at 5-6 (citing 47 U.S.C. § 312(a)(2)).

³⁹ *Order on Reconsideration*, 20 FCC Rcd at 14815 ¶ 6.